IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1833 OF 2004.

Mahadev Babu Giri. ... Petitioner
Versus.
The State of Maharashtra. ... Respondent.

Shri Rajan Salvi, Advocate (appointed) for the Petitioner.

Ms.Rajashree Gadhvi, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 16th August, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Petitioner. By order dated 27th March 2004 the Application for furlough leave made by the Petitioner has been rejected. This petition has been filed by the Petitioner through jail.

2. The application for furlough leave is rejected on the ground that when the furlough leave was granted on the earlier occasion, he did not surrender in time. The second ground is that there is apprehension of danger to the Complainant and the witnesses who deposed against the Petitioner.

3. It is not in dispute that when furlough leave was granted to the Petitioner earlier, there was a delay of only two days in reporting back to the Jail. The

Petitioner has stated in the petition that the delay was on account of the fact that he was suffering from dysentery. In view the said explanation, in my opinion, furlough leave application should not have been rejected on this ground.

4. I have perused the police report dated 15th April 2003. The police report records that the witness who deposed against the Petitioner has stated in her statement that the Petitioner did not create any trouble for her when he was earlier enlarged on furlough leave, and in fact the said witness has stated that conduct of the Petitioner was proper. The Police report records apprehension that one Mahadeo Giri staying at Masewadi was a witness in the prosecution against the Petitioner and the said Mahadeo Giri has expressed apprehension that if the Petitioner is released on furlough leave there will be danger to his life and to the lives of his family members. It is stated in the Police report that as the surety offered by the Petitioner is a woman, it cannot be accepted that she will be able to control the Petitioner. It is further stated that the surety has not produced any document.

5. As pointed out earlier, the Petitioner was granted furlough leave in the past. There is nothing on record to show that when the Petitioner availed of furlough leave, he misbehaved or misused the liberty granted. On

the contrary, the police report itself states that one of the witness who deposed against the Peitioner in prosecution admitted that the Petitioner did not harass her. In my view only on the basis of the apprehension expressed by another witness Mahadeo, furlough leave could not have been rejected as it is not his case that on earlier occasion when the Petitioner was granted furlough leave any attempt has been made by the Petitioner to harass or to threaten the said witness Mahadeo. It is pertinent to note that in the application for furlough leave the Petitioner has stated that he proposes to stay at village Ujalaiwadi and the witness Mahadeo is a resident of Masewadi. Therefore, apprehension expressed by Mahadeo was no ground to reject the application of the Petitioner.

6. Merely because surety offered by the Petitioner is a woman is no ground to say that the Petitioner will not be under the control of the surety. It is stated in the petition that the surety of the same woman was accepted when the Petitioner was enlarged on furlough leave on earlier occasion. The surety could not have been rejected on the ground that she is a woman. If some documents are not produced by the said surety, the authorities can always call upon the said surety to produce the documents.

7. Hence I pass the following order:

(i) The impugned order dated 27th March 2004 is quashed and set aside.

(ii) The competent authority will consider the application dated 21st February 2003 afresh in the light of the observations made in this order. It is made clear that if the surety offered by the Petitioner submits necessary documents, the application of the Petitioner will be considered favourably by the authority.

(iii) The Application made by the Petitioner shall be considered afresh within the period of 12 weeks from today.

(iv) Copy of this order be forwarded to the Petitioner.

Judge.